



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,214	01/23/2004	Edward A. Zumbiel	RWZ/77	9137

26875 7590 02/24/2005  
WOOD, HERRON & EVANS, LLP  
2700 CAREW TOWER  
441 VINE STREET  
CINCINNATI, OH 45202

EXAMINER

DURAND, PAUL R

ART UNIT PAPER NUMBER

3721

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/764,214	Applicant(s) ZUMBIEL ET AL.	
	Examiner Paul Durand	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2004.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-20 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1- 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernard (US 4,700,528) in view of Killy (US 4,396,143) and in further view of Littmann (US 5,229,180).

In regard to claims 1-5,8,13 and 16, Bernard discloses the invention substantially as claimed including wrapping an erected and filled package 36 with shrink wrap 26, over wrapping the package and forming a composite package 44, with a convenience feature in the form of holes 41 and 42, which is accessible to a user outside a package (see Fig.8 and C3,L25 – C5,L21). What Bernard does not disclose is the use of a formed carton, which is filled and has the shrink-wrapped scored. However, Killy teaches that it is old and well known in the art of packages to provide a case 10, with convenience features in the form of handles 24 and dispenser 50, filling the case with beverages 52, such that each beverage is bounded by the carton for the purpose of forming a case and allowing access to it (see Figs. 1,2 and C2,L48 – C3,L420). Furthermore, Littmann teaches that it is old and well known in the art of packaging to provide a completely covered package with a scored film 10 with laser scoring 18 and metal strip 19 functioning as a die and proximate and aligned with a convenience

feature in the form of reclosable tape 20 for the purpose of making a package easier to open (see Figs. 1,2 and C5,L40-47). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Bernard with the carton as taught by Killy and the scoring means as taught by Littmann for the purpose of forming an easy open and accessible package.

In regard to claims 7 and 15, Bernard discloses the invention substantially as claimed including a convenience feature 41 and 42 that is accessible without removing any items from the package (see Fig. 8).

In regard to claim 6 and 14, Bernard discloses the invention substantially as claimed including providing a filled package 36, which is packaged at a separate place other than the wrapping machine (see Fig.8)

In regard to claims 11,12,19 and 20, the modified invention of Bernard discloses the invention substantially as claimed including a scored area 18, which is proximate and aligned with a convenience feature in the form of reclosable tape 20 and applied prior to wrapping. What the modified invention of Bernard does not disclose is the scoring application being applied after the wrapping is formed. However, it would have been an obvious matter of design choice to have provided the laser after the wrapper application, since applicant has not disclosed that applying the laser scoring after the wrapper application solves any stated problem or is for any particular purpose and it appears the invention would do equally well with the scoring applied before the wrapping.

In regard to claims 9,10,17 and 18, the modified invention of Bernard discloses the invention substantially as claimed including a wrapping film 26 fed from a single roll 35. What the modified invention of Bernard does not disclose is the wrapping material having different colors of indicia and utilizing multiple rolls of material. However, it would have been an obvious matter of design choice to have provided a wrapping material having different colors of indicia and utilizing multiple rolls of material, since applicant has not disclosed that providing a wrapping material having different colors of indicia and utilizing multiple rolls of material solves any stated problem or is for any particular purpose and it appears the invention would do equally well with a clear single roll of wrapping material.

### ***Response to Arguments***

3. Applicant's arguments filed 12/7/2004 have been fully considered but they are not persuasive.

Applicant first argues that there is no suggestion to combine the references of Bernard with the teaching of Killy. The examiner disagrees with this argument. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the primary reference of Bernard was chosen because it shows the general aspects of filling closing and

Art Unit: 3721

wrapping a generic package. The teaching of Killy is being relied on to show applicant the specifics of the package that applicant is claiming, such as the dispenser and the handle is well known in the art.

Applicant further argues that there is no suggestion to combine the references of Bernard with the teaching of Killy and Littmann. The examiner disagrees with this argument. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case and as stated above, the primary reference of Bernard was chosen because it shows the general aspects of filling closing and wrapping a generic package and also incorporating a convenience feature such as a handle. Also in figure 6, Bernard also shows a weakened scored area 21 and 22 proximate the handle, which can allow access to the interior. This is similarly seen in figure 7 with area 33. The teaching of Littmann was chosen to show applicant that it is well known to use a laser to score an area near a convenience feature (the reclosable seal) to weaken the film strength and aid ~~or~~ in opening the package.

Applicant further argues that the examiner is using hindsight in making the obviousness rejection. The examiner disagrees with this argument. It must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction

based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this instance, the examiner asserts that the primary reference of Bernard reads generally on applicant's invention, and the teachings of Killy and Littmann are chosen to show applicant the specifics of the package and scoring areas.

Applicant further argues that the examiner has not addressed all the claim limitation since Bernard does not show a completely wrapped package. The examiner does concede that Bernard shows the ends of his package unwrapped. However, Littmann does show a completely wrapped package. Furthermore, the examiner also asserts that packages completely wrapped in a plastic film are well known in the art for a variety of reasons including protection of the contents and to resist tampering.

Therefore, for the reasons indicated above, the rejection is deemed proper.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

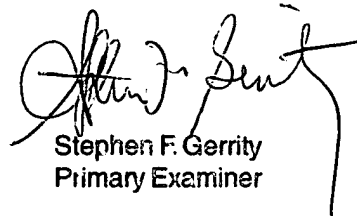
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand  
February 14, 2005



Stephen F. Gerrity  
Primary Examiner